IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 4921 of 2006
Date of Decision: 10.11.2006

The New India Assurance Co.Ltd.,Rewari.

..... Appellant

Versus

Chand Kaur and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri R.C.Kapoor, Advocate for the appellant.

....

In this F.A.O. by the Insurance Company against an award dated 31.7.2006 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Rewari (hereinafter described as `the Tribunal') in M.A.C.T. Petition No.202 of 2005 awarding a sum of Rs.2,40,000/- with 7-1/2% interest per annum in death case of a young man of 19 years, learned counsel for the appellant submitted that his one and only grievance is that though in the impugned award of the Tribunal, composite negligence of both the vehicles has been established, but liability to pay compensation to the claimants has been fastened only on the appellant.

We have carefully perused the impugned award which is based on a Full Bench judgment of the Karnataka High Court reported in AIR 2004 Karnataka 149- (Karnataka State Road Transport Corporation,

Bangalore and etc. Versus Arun alias Aravind and etc.etc.). This judgment has been followed by the Bombay High Court in a judgment reported in 2006(1) A.C.J.R. 82 -(Satpalsingh Dharamsingh Chowdhary and another Versus Ashok G. Raut and Others). As per the ratio of the judgment, in case of composite negligence, the liability to pay compensation can be fastened on either of the tort feasors which, in turn, can recover from the other tort feasor, being a partner in the composite negligence. In the instant case, the appellant did not implead the other tort feasor for fastening the liability, however, its right as such has been established vide the judgments discussed in the impugned award. Accordingly, we grant liberty to the appellant to recover the apportioned amount liable to be paid by the other tort feasor on the basis of the findings recorded in the impugned award and also by establishing its right before appropriate forum.

With the aforesaid indulgence, the impugned award is affirmed and the F.A.O. is dismissed in limine.

(Uma Nath Singh)
Judge

November 10,2006 (Mahesh Grover)
"SCM" Judge